MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021 / 2022

UCY 4612 – CONVEYANCING PRACTICE

(All Sections / Groups)

20 NOVEMBER 2021

Reading Time: 2.45 p.m. – 3.00 p.m.
(15 Minutes)
Answering Time: 3.00 p.m. – 6.00 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of the following statutes into the exam venue :
   (i) Legal Profession Act 1976;
   (ii) National Land Code 1965;
   (iii) Housing Development (Control & Licensing) Act 1966 (together with Rules and Regulations incorporating latest amendments);
   (iv) Strata Titles Act 1985, Rules & Order/Strata Titles (Amendment) Act 2013; and
   (v) Strata Management Act 2013 & Regulations.
   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Peter is a Singaporean. He intends to retire and settle down in Malaysia. Peter plans to buy a beautiful condominium by the sea at Melaka for the purchase price of RM1.5 million from Walter who is a Taiwanese. Peter has appointed your firm, namely M/S Bijak & Co., Advocates and Solicitors located in Melaka to represent him in this sale and purchase transaction as Peter is your client for over past 10 years. Walter is represented by M/S Pandai & Co., Advocates and Solicitors. The Sale and Purchase Agreement ('SPA') between Peter and Walter, *inter alia*, provides the following terms:

"(i) 30% of Purchase Price shall be paid by Peter to Walter as Deposit sum upon execution of the Sale and Purchase Agreement.

(ii) The Purchaser's Solicitors shall retain 3% of the Purchase Price being retention sum and remit it to Inland Revenue Board as an advance payment of the real property gains tax within 75 days upon this Agreement becomes unconditional."

During the negotiation of the terms in the SPA, you have proposed to M/S Pandai & Co. that in the event that the Balance Purchase Price or any part thereof has been paid to M/S Pandai & Co. as stakeholders, they shall only be authorised to pay the Balance Purchase Price to the Walter upon the registration of the instrument of transfer in favour of Peter. Ms. Minnie, the solicitor-in-charge from M/S Pandai & Co. does not agree on release of balance purchase price upon registration of transfer as it will take too long and her client will not agree. Nevertheless, Peter insisted to execute the SPA on the following week as he is a busy businessman.

Few days before the proposed execution date, Peter who is currently in Singapore informed you that he will not be able to come to Malaysia to execute the SPA and other incidental documents due to full lock down order of the country of Malaysia due to Covid-19 pandemic. He suggested you to deliver the documents to him in Singapore and subsequently you will attest his signature in your presence via 'Zoom' meeting as you know him well for over past 10 years. Since Peter has been your client for over past 10 years, you have also agreed to give rebate (or discount) on the professional fee to him.

Meanwhile, Peter has deposited RM500,000-00 into your firm's account and he instructed you to withdraw the same on the next day to pay to one Chang without specifying reason of the withdrawal (or payment) of the said money.

Unfortunately, due to financial problem, Peter has failed to pay the Balance Purchase Price within the Completion Date. As a result, Walter decided to forfeit the Deposit sum amounting to 30% of the Purchase Price.

Continued …….

Examine M/S Bijak & Co., M/S Pandai & Co., Peter and Walter of their duties, rights, responsibilities and liabilities in this sale and purchase transaction. Your answer must be based on the Bar Council's Conveyancing Practice Rulings and Checklist, the relevant statutory provisions and decided cases (if any).

(Total: 25 marks)

QUESTION 2

LZJ Sdn. Bhd. (Company No. 12345-A), a private limited company incorporated in Malaysia under the Companies Act 2016 had purchased a unit of high rise condominium known as Parcel No. A-02-02A, within Level No. 2 of Building No. Block A measuring approximately 2,000 square feet in area and bearing postal address Lot A-02-02A, Melaka Wonderful Condominium, Jalan Wonderful, 75450 Melaka together with two units of car park within a housing development project known as MELAKA WONDERFUL CONDOMINIUM ('the Project') erected over land held under leasehold master title PN 12345 Lot 67890, in the Town of Melaka, District of Melaka and State of Melaka (hereinafter referred to as 'the said Property') for the purchase price of RM2,500,000-00 only from Melaka Gagah Developer Sdn. Bhd. ('MGDSB') in April 2021. Pursuant to the terms of the Joint Venture Agreement between Cash Ling ('the Proprietor') and MGDSB dated 6th January 2020, the Proprietor has granted a Power of Attorney dated the 19th February 2020 in favour of the MGDSB (hereinafter referred to as "the PA") to deal with the Project in accordance with the powers and rights conferred therein. The separate subdivided strata title to the said Property has yet to be issued by the relevant land office/registry and MGDSB is expected to deliver the vacant possession of the said Property in March 2024. In order to finance the Project, MGDSB had created a charge over the abovesaid master title with Bank Rich Berhad under the presentation number 12345/2021. Meanwhile, LZJ Sdn. Bhd. financed the purchase by assigning the said Property to Bank Kaya Bhd. ('BKB') for a housing loan amounting to RM1,500,000-00.

(a) MGDSB and LZJ Sdn. Bhd. would like to appoint you to act for them in this sale and purchase transaction together with loan transactions. Illustrate to them the relevant procedures and the required documentations to complete the sale and loan transactions.

(20 marks)

(b) Evaluate the significance of a charge over the master title to the abovementioned sale transaction.

(5 marks)

(Total: 25 marks)

Continued …….

QUESTION 3

Mr. Reggie Prop is the registered proprietor of all that piece of land described as HS(M) No.23345, Lot 8659 Mukim Selamat, in Daerah Ulu Selamat ('the said land') for which he holds an original title deed. However, unknown to him sometime in March 2020, during the Movement Control Order ('MCO') one Ha Too, contacted Ms. Per Guam and requested her to prepare a Power of Attorney granting Ha Too the right to sell the said land on Mr. Reggie Prop's behalf. Ms. Per Guam being cautious, wanted to meet with the parties in person to ascertain the genuineness of the parties. Ha Too then arranged for a 'Zoom' meeting where Ha Too introduced himself as the nephew of the elderly 'Mr. Reggie Prop' (who was in fact an imposter). When legal firms were allowed to reopen their offices, Ms. Per Guam prepared the Power of Attorney and personally attended to the execution and attestation of the Power of Attorney after ascertaining that the fraudulent 'Mr. Reggie Prop' was of sufficient mental capacity to understand the significance of the Power of Attorney. The Power of Attorney was duly registered at the High Court. Later, Ha Too using the Power of Attorney, managed to obtain a replacement computerised title for the said land. Sometime in May 2021, he contracted to sell the said land to Pem Bay Lee for RM800,000-00 through the office of M/S Law Yar & Co., Advocates and Solicitors. Pem Bay Lee obtained a loan from Friendly Bank Bhd. who instructed M/S Law Yar & Co., to prepare the charge documents in favour of Friendly Bank Bhd. Whilst all client meetings were held through 'Zoom', the execution and attestation of all documents was done at the premises of M/S Law Yar & Co. Meanwhile the loan was in default, and in October 2021, Friendly Bank Bhd. issued a Notice of Demand to the address of the real Mr. Reggie Prop for failure to service the loan. The real Mr. Reggie Prop then discovered the status of the said land and lodged a caveat on the said land.

Explain to Mr. Reggie Prop on whether he may sue Ms. Per Guam, M/S Law Yar & Co and any other parties for the loss of his land. Justify the possible negligence or otherwise of the respective parties and what measures could have been taken if any, to avoid such land scams with reference to relevant laws and cases and the Bar Council's Conveyancing Guidelines.

(Total: 25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

Amar, Akbar and Anthony have been best friends since childhood. In 2019, they jointly purchased a residential property through the FundmyHome scheme and have currently let it out at a very nominal rental to an NGO that uses it as a temporary shelter for the destitute.

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Susan, a 26-year-old young Malaysian executive, is married to Amar and is interested in buying their first house. However, Amar has told her that due to his various financial commitments, he will not be able to contribute financially towards their matrimonial home. Susan has heard of the Home Ownership Campaign ('HOC') 2021, and of the special discounts being given to purchasers. She attended the property exhibition on 21 June 2021 and is very interested in booking a condominium unit ('the said Property') with Sunshine Developers Sdn. Bhd. for the purchase price of RM450,000-00 on her own. She has also enquired about home loan financing from various banks and has been unofficially told by Good Bank Bhd. that she would qualify for a 100% loan based on her income alone.

However, Susan being a cautious person, approaches you for legal advice concerning her intended purchase of the said Property under the HOC 2021 and subsequent financing. She is a little apprehensive as she will be buying a completed property that has been left unoccupied for over a year, without being able to inspect it. She is worried that the said Property may have deteriorated and may need repairs. Susan would like to know whether Sunshine Developers Sdn. Bhd. would be liable for any repairs.

Explain to Susan the legal implications of buying a residential property at the HOC 2021 and the qualifying criteria for financial advantages under the scheme.

(Total: 25 marks)

OR

QUESTION 4 (b)

Sometime in 2020, Pem Bar Lee bought an apartment (the said property) from Sunshine Developers Sdn. Bhd. (SDSB). Pem Bar Lee took a loan from Good Bank Bhd. (GBB) to finance the purchase. As strata title was not issued, he entered into a Loan Agreement cum Assignment (LACA) with GBB whereby Pem Bar Lee assigned all his "rights, title and interest" in the property together with a Power of Attorney to GBB. A copy of the assignment was sent to SDSB.

Recently Pem Bar Lee who runs a curio shop in Jonker Street in Melaka, has been experiencing cash flow problems due to the Covid 19 pandemic. Consequently, he defaulted in the housing loan. GBB gave a 6-month grace period up to October 2020, to settle his payments. As Pem Bar Lee's financial situation had not improved, he tried negotiating with GBB to restructure his loan repayments. As per Bank Negara's Covid assistance policy, GBB were sympathetic. They renegotiated and restructured Pem Bar Lee's loan repayments.

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Nevertheless, as Pem Bar Lee's business did not recover, he was forced to terminate his business and take up alternative employment as a 'Grab' driver. He managed to pay off all his trade creditors. The only outstanding debt is now is the housing loan. In June 2021 GBB informed him regretfully that they had decided to sell the property by private treaty to Sum Boh Dee. However, before the sale to Sum Boh Dee could be finalised, strata title to the property was issued. GBB therefore requested SDSB to execute the Memorandum of Transfer directly in favour of GBB based on the LACA. SDSB however refuse to do so claiming that it had not given its consent to the assignment and that no administrative fee had been paid to it for the assignment.

GBB decided to ignore SDSB and proceeded to finalise the sale to Sum Boh Dee. SDSB's internal legal counsel however, advise them that the sale to Sum Boh Dee could only be proceeded with by an order of sale from the court as strata title had been issued.

Determine the validity or otherwise of SDSB's stance in respect of the assignment to GBB and on how it may correctly sell the apartment to recover the amount outstanding on Pem Bar Lee's loan.

(Total: 25 marks)

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